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C O N F I D E N T I A L DUSHANBE 001745

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SUBJECT: TAJIKISTAN: UN SPECIAL RAPPOREUR FINDS JUDICIARY UNBALANCED

REF: DUSHANBE 1729

CLASSIFIED BY: Richard Hoagland, Ambassador, US Embassy
Dushanbe, State.

REASON: 1.4 (b)

1. (C) During his recent visit to Tajikistan, UN Special Rapporteur on Independent Judiciary and Lawyers Leandro Despuy noted a great imbalance between the power of Tajikistan's prosecutors, and the weakness of lawyers ("advocates") and judges in the system. United Nations Tajikistan Office of Peacekeeping's (UNTOP) Ambassador Vladimir Sotirov reported Despuy found the prosecutors' ability to initiate investigations and prevent the implementation of a court decision distorted the objectivity and fairness of the court process. Judges are too often afraid of prosecutors. He hoped the parliament's reforms to the criminal code would remove these powers from the prosecutor, thus legislating a more balanced judicial system.

2. (C) NOTE: A current case in point is journalist Jumaboy Tolibov. Having written articles criticizing the Prosecutor's Office in Soghd province, he was arrested and sentenced to prison. Acting on his appeal, the Supreme Court's Criminal Affairs Board ordered his release. The Prosecutor General overruled the Supreme Court, and Tolibov remains behind bars.
END NOTE

3. (C) According to Sotirov, Despuy enjoyed access to all levels of government, and remarked on Tajik interlocutors' openness. People were unafraid to share their concerns about salaries, corruption, and a need for better training. The Special Rapporteur will prepare a report on his visit for the UN High Commission on Human Rights; he should publish his full findings in Spring 2006.

4. (C) Turning to other issues, Sotirov observed UNTOP's "relationship of trust" with the Tajik government allowed them to address a number of sensitive issues not specifically in their mandate. For example, UNTOP was addressing a number of complaints they had received from citizens and inmates about food and sanitation conditions in prisons. UNTOP experienced the same difficulties and frustrations as other international missions going through the MFA to get meetings (reftel), but characterized it as bureaucratic, not political. "They don't have the administrative capacity to tackle requests."

5. (C) Sotirov referred to the Iskandarov trial as a step in the "political elimination of the warlords" after the Civil War. He observed that democratic reforms were not an easy sell to the Tajik public for two reasons. First, many think democracy caused the civil war, so enthusiasm for democratic initiatives is limited. Second, remembering the Civil War, many equate the political opposition with a potential military opposition.

6. (C) COMMENT: It is not surprising that Tajik interlocutors spoke to the Special Rapporteur openly about problems of corruption and salaries--these are safe topics which generate much hand-wringing and head-nodding, but few viable solutions. UNTOP can sometimes take a cautious approach to the government of Tajikistan, and is careful to preserve its status and limited influence, but also uses its unique position to address problems delicately where other institutions have limited access.

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